

*No protest need
Release to D.D.*

CP:E:EO:T:5

SEP 30 1996

Employer Identification Number: [REDACTED]
Key District: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You were created and are controlled by [REDACTED], a fraternal organization. The directors of [REDACTED] are also your directors. Your original purpose was to support [REDACTED]. You state that you were dormant from [REDACTED] but that in [REDACTED] you "began to raise revenue to support [REDACTED] for it to pursue its fraternal and charitable goals." Beginning [REDACTED], you decided to broaden your charitable and educational activities and thereafter started conducting bingo games twice a week and selling pull-tabs at the games.

You have stated that you are only supporting [REDACTED] charitable programs and not its fraternal programs. You have provided general statements as to the programs supported but have not provided sufficient documentation to show that these programs of [REDACTED] are exclusively charitable, nor have you shown that you retain any control or discretion as to the use of the funds given to [REDACTED] or established a procedure for followup to ensure that the funds are used exclusively for charitable purposes.

You gross receipts for [REDACTED] and [REDACTED] were \$[REDACTED] and \$[REDACTED] respectively. You state that your net proceeds are to be paid out for charitable purposes. Your stated net proceeds from bingo and pull-tabs for those years were \$[REDACTED], \$[REDACTED] and \$[REDACTED]. Payments to charity for those years are stated as \$[REDACTED], \$[REDACTED] and \$[REDACTED]. You do not provide documentation to substantiate that these were all to qualified charitable recipients.

Wages shown as being paid in [REDACTED] and [REDACTED] were \$[REDACTED] (for half a year), \$[REDACTED], and \$[REDACTED]. You also state

[REDACTED]
[REDACTED]
that your only employees are the [REDACTED] who operate the games and sell the pull-tabs, and who are paid at the rate of \$[REDACTED]/hour for [REDACTED] hours each week. Also, though you rent (from [REDACTED] who owns the building) for only [REDACTED] nights a week (at \$[REDACTED] per night), it appears you also paid for maintenance, painting and rewiring of the building.

Section 501(a) of the Code, in part, provides for the exemption from federal income tax for organizations described in section 501(c).

Section 501(c) (3) of the Code, in part, provides for the exemption of organizations which are both organized and operated exclusively for charitable purposes as long as, among other conditions, no part of the net earnings inure to the benefit of any private individual or shareholder.

Section 1.501(c) (3) -1(a) of the Income Tax Regulations states, in part, that if an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c) (3) -1(b) (1) of the regulations states, in part, that an organization is not organized exclusively for exempt purposes unless its activities are limited to one or more exempt purposes.

Section 1.501(c) (3) -1(c) (1) of the regulations, in part, states that an organization will not be operated exclusively for exempt purposes if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c) (3) -1(c) (2) of the regulations states, in part, that an organization is not operated exclusively for exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(a) -1(c) of the regulations states, in part, that the words private shareholder or individual refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c) (3) -1(d) (1) (ii) of the regulations, in part, states that an organization is not organized or operated for exempt purposes unless it serves a public rather than a private interest. To meet this requirement it is necessary that the organization establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, or shareholders of the organization.

Section 1.501(c)(3)-1(e)(1) of the regulations states that an organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in section 513. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size and extent of the trade or business and the size and extent of the activities which are in furtherance of one or more exempt purposes. An organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3).

Rev. Rul. 64-182, 1964-1 C.B. 186, describes an organization that derived its income principally from the rental of space in a large commercial office building that it owned, maintained, and operated. The charitable purposes of the corporation are carried out by aiding other charitable organizations, selected at the discretion of its governing body, through contributions and grants to such organizations for charitable purposes. The revenue ruling holds that the organization meets the primary purpose test of section 1.501(c)(3)-1(e) of the regulations because it is carrying on through such contributions a charitable program commensurate in scope with its financial resources in furtherance of its exempt function.

Rev. Rul. 68-489, 1968-2 C.B. 210, describes an organization that distributes funds to nonexempt organizations. The exempt organization ensured use of the funds for section 501(c)(3) purposes by limiting distributions to specific projects that are in furtherance of its own exempt purposes. It retains control and discretion as to the use of the funds and maintains records establishing that the funds were used for section 501(c)(3) purposes. The Service concludes that the organization's exemption under section 501(c)(3) of the Code will not be in jeopardy even though it distributes funds to nonexempt organizations, provided it retains control and discretion over use of the funds for section 501(c)(3) purposes.

In Better Business Bureau of Washington D.C. v. United States, 326 U.S. 279 (1945), it was held that a single non-exempt purpose, if substantial in nature, would preclude exemption under section 501(c)(3) of the Code regardless of the number or importance of truly exempt purposes.

While assisting [redacted] with its charitable programs would be within the scope of section 501(c)(3) of the Code, assisting it

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████████████████████
with its fraternal functions would not. Even though you state that you are only supporting ██████'s charitable activities, you haven't shown that these programs are exclusively charitable or that you have any degree of control or followup to ensure that charitable rather than fraternal purposes are being served. Thus you do not fit the requirement for exemption as described in Rev. Rul. 68-489.

The fact that, at best, less than ██████ percent (████%) of your gross receipts has been given for charitable purposes, with so much giving for other purposes, indicates that you may have no significant charitable program. This is also supported by the fact that less than ██████ of your net proceeds in █████ were spent for charitable purposes, and, for the three years combined, less than ██████ (████) of your net proceeds were spent for charitable purposes. Thus you do not appear to be conducting a charitable program commensurate in scope with your financial resources and would not qualify for exemption under the rationale of Rev. Rul. 64-182.

For the stated number of employees and hours worked, the annual wages paid, at the stated ██████'s (\$████ per hour, would be \$████. However, you show wages paid far in excess of that figure each year. This, and the significant portion of your funds going to █████ through rent and other items, e.g., repairs, maintenance, and rewiring, indicates that you may be operating for a private rather than a public benefit and that your net earnings may be inuring to the benefit of private individuals in contravention of sections 1.501(c)(3)-1(c)(2) and -1(d)(1)(ii) of the regulations.

Thus it appears that you are conducting a significant business activity with a minuscule benefit for charity and a substantial benefit for other individuals and for █████. This would tend to indicate that you have no exempt purpose and that you are operating for private, rather than public, purposes. Under the rationale of Better Business Bureau, (supra), this would preclude exemption under section 501(c)(3) of the Code. See also section 1.501(c)(3)-1(e)(1) of the regulations.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your

[REDACTED]
[REDACTED]
views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key district office. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
Attn: CP:E:EO:T:5, Room 6539
1111 Constitution Ave, N.W.
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

(signed) Garland A. Carter

Garland A. Carter
Chief, Exempt Organizations
Technical Branch 5